



# THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

HEALTH AND FAMILY WELFARE DEPARTMENT

## NOTIFICATION

The 15th June, 2021

**No. HLA 585/2019/78.-** In exercise of the powers conferred by the sub-section (1) of section 49 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention And Control) Act, 2017 (No. 16 of 2017), the Governor of Assam is pleased to make the following rules to provide for the appointment, terms and conditions, qualifications and manner of enquiry by Ombudsman namely:-

### **1. Short title, extent and commencement-**

- (a) These Rules may be called the Assam Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome Rules, 2019.
- (b) It shall extend to the whole State of Assam
- (c) They shall come into force on the date of their publication in the Official Gazette.

### **2. Definitions-**

(1) In these rules, unless the context otherwise requires,-

- (a) "Act" means the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (No. 16 of 2017);
- (b) "appropriate authority" means, unless otherwise notified, the National AIDS Control Organization in case of the Central Government and the concerned State AIDS Control Society in case of the State Government;
- (c) "Child Welfare Committee" means Child Welfare Committee constituted under section 27 the Juvenile Justice (Care and Protection of Children) Act, 2015 (Central Act No. 2 of 2016);
- (d) "complaint" means any information or grievance made orally or in writing to the Ombudsman;
- (e) "District" means revenue district of the State;

- (f) "Form" means the forms annexed to these Rules and such forms as may be notified from time to time by the State Government to be used for the purposes of the Act and these rules;
- (g) "High burden districts" means districts notified as such by the appropriate authority under the Central Government of India from time to time;
- (h) "Ombudsman" means an Officer appointed or designated by the State Government, as the case may be, under section 23 of the Act;
- (i) "rules" means Assam Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome Rules, 2020;
- (j) "Section" means section of the Act;
- (k) "State Government" means the Government of Assam; and
- (l) "State Level Network (SLN)" means community base organization of People living with HIV members, including Assam State Network of People living with HIV/AIDS (ANP+) and their associated District Level Network ("DLN") in State of Assam

(2) All other words and expressions used herein and not defined in these rules but defined in the Act shall have the meaning respectively assigned to them in the Act.

**3. Compliance of provisions of the Act-** The Assam State AIDS Control Society shall:

- (a) provide free diagnostic services to all individuals in all Govt. Health Service Centers and Hospitals across the State; (treatment protocol and reporting) to ensure quality of services provided by Private Service provider related to HIV;
- (b) Antiretroviral Therapy (ART) drugs shall be provided free of cost to all HIV positive people as per the provisions of the Act and guidelines of National AIDS Control Organization;
- (c) in the situation if any drug is not available / no supply from NACO the state will be responsible for either procurement of the drug and ensuring delivery to the People Living with HIV (PLHIV) client or the client will be reimbursed if they procure from the market after obtaining necessary directions from the ART centre;
- (d) Opportunistic Infection (OIs) shall also be managed at the level of Institute having ART centre with State Government's support and it shall be ensured that all Opportunistic Infection drugs are made available as per NACO guidelines free of cost for the People Living with HIV in need from these Institutes as per the provisions of the Act.

**4. Appointment & Jurisdiction of Ombudsman:**

- (a) Notwithstanding anything contained in this rule, the Govt. of Assam shall designate all the Divisional Commissioners of five divisions of Assam as Ombudsman as the Commissioners are holding their positions in various zones and have their own jurisdiction of districts of responsibilities where they will be accountable to address grievances of the People Living with HIV (PLHIV) from these districts as an additional responsibility in public interest namely;

Sl. No.	Division Name	Divisional Office	Districts under their jurisdiction.
1	North Assam	Tezpur	Udalguri, Darrang, Sonitpur, Biswanath Chariali
2	Lower Assam	Panbazar, Guwahati	Dhubri, Kokrajhar, Bongaigaon, Goalpara, Baksa, Chirang, Barpeta, Nalbari, Kamrup Rural, Kamrup Metro, South Salmara-Mankachar
3	Central Assam	Nagaon	Dima Hasao, East Karbi Anglong, West Karbi Anglong, Nagaon, Morigaon, Hojai
4	Upper Assam	Jorhat	Lakhimpur, Dibrugarh, Dhemaji, Tinsukia, Sibsagar, Jorhat, Golaghat, Charaideo, Majuli
5	Barak Valley	Silchar	Cachar, Hailakandi, Karimganj

Provided that the person designated in the above position will be responsible for the role of Ombudsman during his tenure in the zone and the same will be automatically taken up by the successor of the same position.

Provided further that if the position is vacant for more than a month or an incumbent is on leave for more than a month, then the adjacent Divisional Commissioner will automatically be responsible to take over the charge during the period of absence.

- (b) The State Government shall provide him the assistance from the Department of Legal and Legislative Affairs on Legal Issues that may arise in the course of his work, if so required;

Provided that the State Government shall provide necessary capacity building training within thirty days from the date of notification released to the Ombudsman and the team assisting him;

Provided further that if Government announces more number of divisions or more number of districts or reorganizes the divisions or districts subsequently, then the department is empowered to issue notification to designate such new Divisional Commissioner as Ombudsman and also change the jurisdiction of each division as per reorganization if any.

#### **5. Manner of inquiring into complaints by Ombudsman-**

- The Ombudsman shall act in an objective and independent manner when inquiring into complaints made under the Act;
- While inquiring into complaints under the Act, the Ombudsman shall not be bound by any rules of evidence and may follow such procedure as he considers just and proper;
- No cross-examination shall be permitted in inquiries before the Ombudsman;
- The Ombudsman may, in the interests of justice, take the assistance of experts, including protected persons and persons vulnerable to HIV, and persons working in the fields of HIV and AIDS, public health or health delivery systems;
- The Ombudsman shall have the power to pass interim orders in cases of medical emergency without hearing the parties;
- The Ombudsman shall have the power to pass orders, including withdrawal and rectification of the violation, counseling, social service etc;

- (g) The Ombudsman shall inform the complainant of the action taken; and
- (h) The Ombudsman shall inform the parties to the complaint of their right to seek judicial review from the Ombudsman's order.

#### **6. Manner of maintaining records by Ombudsman-**

(1) The Ombudsman shall –

- (a) immediately on receipt of a complaint, record it by assigning a sequential unique complaint number in a register maintained solely for that purpose in physical or computerized form;
- (b) on receipt of the complaint, acknowledge it including by sending the unique complaint number by SMS or e-mail to the complainant where available;
- (c) record the time of the complaint and the action taken on the complaint in the register;
- (d) maintain the register of complaints in a manner that ensures confidentiality of data;
- (e) comply with data protection measures in accordance with the provisions of Section 11 of the Act;
- (f) ensure that the rights and entitlements of children affected by HIV or HIV-affected person or HIV-positive person are protected;
- (g) transfer the complaints or matters concerning the children affected by HIV or HIV-affected person or HIV-positive person to other competent authorities like Child Welfare Committee of the respective districts working as per Juvenile Justice Act and concerned Ombudsman having jurisdiction in the matter;
- (h) conduct regular inspection visits of healthcare providers and institutions where children affected by HIV or HIV-affected person or HIV-positive person are living and recommend action for improvement in quality of services to the State Government.

(2) If any protected person is not willing to file a complaint to the Ombudsman directly due to fear or stigma issues, the District Level Network of People Living with HIV/AIDS and other State Level Grievance Redressal Committee may be intervene with written consent of such protected person. The District Level Network of People Living with HIV and State Grievance Redressal Committee can make a complaint on behalf of the protected person with the Ombudsman for justice.

#### **7. Manner of making complaints to Ombudsman.-**

(a) Any person may make a complaint to the Ombudsman within whose jurisdiction the alleged violation took place, within three months from the date that the alleged violation took place:

Provided that the Ombudsman may, for reasons to be recorded in writing, extend the time limit to make the complaint by a further period of three months, if he is satisfied that circumstances prevented the complainant from making the complaint within the stipulated period.

(b) All complaints shall be made to the Ombudsman in writing in accordance with the form set out in the Appendix appended to these rules:

Provided that where a complainant cannot make a complaint in writing, the Ombudsman shall render all reasonable assistance to the complainant to produce the complaint in writing.

(c) In cases of medical emergency, the Ombudsman or his assistant may visit the complainant at the location of the alleged violation or any other convenient place to enable written documentation of the complaint.

(d) The Ombudsman may receive complaints made in person, via post, telephonically, or through electronic form through the Ombudsman's website:

Provided that the State Government, within seven days of the appointment of the Ombudsman shall establish a website of the Ombudsman.

#### **8. Disseminate information on Ombudsman.-**

(a) Within thirty days of the appointment of the Ombudsman, the appropriate authority under the State Government shall disseminate information about the office of the Ombudsman, including the Ombudsman's jurisdiction, role, functioning and procedures, and the manner in which complaints can be made to the Ombudsman.

(b) Such dissemination shall be undertaken to advance the understanding, in particular, of protected persons, healthcare workers, legal aid service authorities and civil authorities.

#### **9. Manner of recording pseudonym and providing suppression of identity in legal proceedings.-**

(a) In any legal proceeding where a court, pursuant to clause (a) of sub-section (1) of section 34 of the Act directs, on an application made by a protected person or any other person on his behalf, that in the interests of justice the proceeding or any part thereof be conducted by suppressing the identity of such protected person, the Ombudsman of the court shall direct all parties involved to:-

(i) file one copy of the documents bearing the full name, identity and identifying details of the parties concerned before the court, which shall be kept in a sealed cover and in safe custody with the Ombudsman ; and

(ii) serve one copy of documents bearing the full name, identity and identifying details of the parties concerned upon other parties in the proceeding with a requirement to ensure that the full name and identity of the parties concerned are kept confidential.

(b) The Ombudsman shall provide pseudonyms to protect the persons involved in the legal proceedings in the documents filed before the court in such manner that the identity and identifying details of the protected person involved in the legal proceeding are kept confidential.

(c) The Ombudsman shall place the sealed covered documents before the court on the first date the legal proceeding is listed for hearing before the court, if so required by the court.

(d) The identities of the protected person involved in the legal proceeding and their identifying details shall be displayed in pseudonym in all documentation generated by the court in relation to the legal proceeding, including listing of the case on the court Board, interim orders and final judgments.

(e) The identity and identifying details of the protected person involved in the legal proceeding shall not be revealed by any person or their representatives including assistants and staff.

*Exception:* Where in the interest of justice, the name and identity of the protected person needs to be revealed to a third party, it shall only be allowed by an order of the court.

(f) Printing or publishing any matter in relation to the aforementioned legal proceedings



in electronic or any other form, shall be lawful only if the same is done by ensuring the suppression of identities of the parties in the legal proceeding.

- (g) In any legal proceeding before it under the Act, the court shall comply with data protection measures in accordance with section 11 of the Act

**10. Care and protection of children.-**

- (a) State Government may take appropriate measures for care and protection of all children affected by HIV or HIV-positive children which also includes HIV prevention, counseling and testing activities;
- (b) State Government shall also ensure free healthcare services and treatment to all children affected by HIV or HIV-positive children who are living in child care institutions established under Juvenile Justice (Care and Protection of Children) Act, 2015;
- (c) The Child Welfare Committee shall take appropriate measures for safe keeping documents related to the property of children affected by HIV or AIDS;
- (d) State Government, within twelve months of notifications of these rules, may lay-down the mechanism and procedure for protection of property of children affected by HIV or AIDS;
- (e) The Ombudsman shall establish effective linkages with Child Welfare Committee and transfer the cases falling in their jurisdiction;
- (f) The Appropriate authority shall disseminate information about the Child Welfare Committee to all children affected by HIV or HIV-affected persons or HIV-positive persons;

**ANURAG GOEL,**

Principal Secretary to the Government of Assam,  
Health & Family Welfare Department.

**Form for making Complaint to Ombudsman****(rule 7)**For Official Use only:

Unique Complaint Number: \_\_\_\_\_

In-Referral: Self/State Level Networks/DLN/NGOs/Other \_\_\_\_\_

Name: \_\_\_\_\_ (Optional) Date: \_\_\_\_\_

Phone/MobileNo: \_\_\_\_\_

Email: \_\_\_\_\_

Fax: \_\_\_\_\_

Address for communication: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date of Incident \_\_\_\_\_

Place of Incident \_\_\_\_\_

Description of incident \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Person/ Institution responsible for the incident: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature/ Thumb Impression of Complainant\*

- Where the complaint is received orally or telephonically and reduced to writing by the Complaints Officer, the Complaints Officer shall sign and date the Form